THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 26137 of 2007

Dated: 07.12.2007

Between:

Zakiuddin Noman Bahai Poonawala

... Petitioner

AND

The Secretary (Revenue),
Govt., of Andhra Pradesh,
Secretariat Building, Hyderabad
& others.

... Respondents

Counsel for the petitioner : Sri M.T. Ghori

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WRIT PETITION No. 26137 of 2007

ORDER:-

This writ petition is filed for a writ of mandamus to set aside notification dated 03.02.2006 published on 03.08.2006 in A.P. Gazette notification, as illegal and arbitrary.

The petitioner claims to be the owner of an extent of 1411 square yards comprised in Sy.No.259/1 of Attapur Village. He claims that in the year 1997, respondent No.3 occupied his property for temporarily using the same for conducting prayers and that since then the respondents have not vacated the premises. The petitioner filed L.G.C. No.34 of 1997 in the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and the said L.G.C. was withdrawn with liberty to approach the civil court. The petitioner filed O.S.No.16 of 2003 before the A.P. Wakf Tribunal, Hyderabad (for short, 'the Wakf Tribunal') for recovery of possession in respect of the said property and the said suit is pending. Thereafter, he filed the present writ petition feeling aggrieved by notification dated 03.02.2006 published on 03.08.2006 by which his property is claimed to have been included.

I have heard Sri M.T. Ghori, learned counsel for the petitioner.

Under Section 7 of the Wakf Act, 1995 (for short, 'the Act')

if, after the commencement of the Act, any question arises, whether a particular property specified as Wakf property in a list of Wakfs is Wakf property or not, or whether a Wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board or the mutawalli of the Wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision on the question and the decision of the Tribunal thereon shall be final.

The petitioner is thus having an effective alternative remedy by approaching the Wakf Tribunal. He has, in fact, already filed O.S.No.16 of 2003 in respect of the same property against respondent No.3. Therefore, there is absolutely no reason for him not to seek appropriate relief before the Wakf Tribunal either in the said proceedings or in a fresh proceeding by questioning the impugned addendum.

The law is well settled that where a person has an effective alternative remedy, this Court does not extend its discretionary jurisdiction under Article 226 of the Constitution of India. (see **Harbanslal Sahnia v. Indian Oil Corporation Limited**[1] and **U.P. State Spinning Company Limited v. R.S. Pandey and another**[2]).

For the aforementioned reasons, the writ petition is dismissed. The petitioner is left free to avail the remedy under Section 7 read with Section 83(2) of the Act.

As a sequel to dismissal of the writ petition, WPMP.No.34091 of 2007 filed by the petitioner for interim relief is also dismissed.

C.V. NAGARJUNA REDDY, J

Date: 07.12.2007
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[1] (2003) 2 SCC 107
[2] (2005) 8 SCC 264